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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/698,860   | 10/31/2003  | John C. Condon       | CONDON-42615        | 9348             |
| 26252  | 7590        | 02/23/2005           | EXAMINER            |                  |
| KELLY BAUERSFELD LOWRY & KELLEY, LLP<br>6320 CANOGA AVENUE<br>SUITE 1650<br>WOODLAND HILLS, CA 91367 |             |                      | OKEZIE, ESTHER O    |                  |
|  |             | ART UNIT             | PAPER NUMBER        |                  |
|  |             | 3654                 |                     |                  |

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                              |                  |
|------------------------------|------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.              | Applicant(s)     |
|                              | 10/698,860                   | CONDON, JOHN C.  |
|                              | Examiner<br>Esther O. Okezie | Art Unit<br>3654 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 10,11 and 22 is/are withdrawn from consideration.
- 5) Claim(s) 16-21 and 23-28 is/are allowed.
- 6) Claim(s) 1-5,8,9 and 12-14 is/are rejected.
- 7) Claim(s) 6,7 and 15 is/are objected to.
- 8) Claim(s) 10,11 and 22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/31/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5,8,9,12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu.
2. Regarding claim 1 Liu discloses a pet litter remover and bagger comprising an outer tube including an open end (15); means for holding a closed end of a disposable bag within the outer tube (33), means for moving the apparatus between open and closed configurations (18), and a clamp assembly (24) for grasping the waste as the apparatus moves from the open configuration to the closed configuration, connected generally about a perimeter of the outer tube open end (32); wherein the clamp assembly brings the waste into the bag as the apparatus moves from the open configuration to the closed configuration (see figures 6 and 7).
3. Regarding claim 2 Liu discloses the device according to claim 1 including an inner tube (18) slidably movable within the outer tube, and positioned within and coaxial with the outer tube along a longitudinal axis.
4. Regarding claim 3 Liu discloses the device according to claim 2 wherein the holding means (33) is connected to the inner tube (18).

5. Regarding claim 4 Liu discloses the device according to claim 2 including a spring (21) connecting the inner tube to the moving means.
6. Regarding claim 5 Liu discloses the device according to claim 2 wherein the inner tube moves away from the open end of the outer tube, pulling the bag further within the outer tube as the apparatus moves from the open configuration to the closed configuration (see figures 6 and 7).
7. Regarding claim 8 Liu discloses the device according to claim 1 wherein the clamp assembly includes at least two jaws (31 and 32), pivotally movable towards the open end of the outer tube as the apparatus moves from the open configuration to the closed configuration (pivot 33).
8. Regarding claim 9 Liu discloses the device according to claim 8 wherein the outer tube surrounds a portion of the jaws as the apparatus moves from the open configuration to the closed configuration (see figures 6 and 7).
9. Regarding claim 12 Liu discloses the device according to claim 1 wherein the outer tube is operationally connected to the clamp assembly whereby slidable movement of the outer tube along a longitudinal axis away from and towards the clamp assembly respectively opens and closes the clamp assembly (see figures 6 and 7).
10. Regarding claim 13 Liu discloses the device according to claim 1 wherein the moving means includes a trigger assembly (29) operationally connected to the holding means (figures 1 and 8).

11. Regarding claim 14 Liu discloses the device according to claim 13 wherein the moving means includes a handle portion (12) operationally connected to the outer tube (15).

12. Claims 1,2,3,5,8,9,12 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent GB 2236271 A.

13. Regarding claim 1 GB 2236271 A discloses a pet litter remover and bagger comprising an outer tube including an open end (1); means for holding a closed end of a disposable bag within the outer tube (9), means for moving the apparatus between open and closed configurations (6), and a clamp assembly (33) for grasping the waste as the apparatus moves from the open configuration to the closed configuration, connected generally about a perimeter of the outer tube open end; wherein the clamp assembly brings the waste into the bag as the apparatus moves from the open configuration to the closed configuration (see figures 1-3).

14. Regarding claim 2 GB 2236271 A discloses the device according to claim 1 including an inner tube (2 and 3) slidably movable within the outer tube (1), and positioned within and coaxial with the outer tube along a longitudinal axis.

15. Regarding claim 3 GB 2236271 A discloses the device according to claim 2 wherein the holding means (33) is connected to the inner tube (2).

16. Regarding claim 5 GB 2236271 A discloses the device according to claim 2 wherein the inner tube moves away from the open end of the outer tube, pulling the bag

further within the outer tube as the apparatus moves from the open configuration to the closed configuration (see figures 1-3).

17. Regarding claim 8 GB 2236271 A discloses the device according to claim 1 wherein the clamp assembly includes at least two jaws (22 and 33), pivotally movable towards the open end of the outer tube as the apparatus moves from the open configuration to the closed configuration.

18. Regarding claim 9 GB 2236271 A discloses the device according to claim 8 wherein the outer tube surrounds a portion of the jaws as the apparatus moves from the open configuration to the closed configuration (see figures 1-3).

19. Regarding claim 12 GB 2236271 A discloses the device according to claim 1 wherein the outer tube is operationally connected to the clamp assembly whereby slidable movement of the outer tube along a longitudinal axis away from and towards the clamp assembly respectively opens and closes the clamp assembly (see figures 1-3).

### ***Allowable Subject Matter***

Claims 6,7 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-21,23-28 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US-3425732; US-3777708.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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